

National Park Service  
U.S. Department of the Interior  
National NAGPRA

National NAGPRA Program  
FY 2012 Final Report  
For the period October 1, 2011 – September 30, 2012

DRAFT

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## National NAGPRA Program FY 2012 Statistics at a Glance

- o **Summaries received:** 1,580 total from institutions, 460 reporting no collection requiring a summary
- o **Inventories received:** 1,347 total, 1,138 from institutions, 265 reporting no collection
- o **Notices of Inventory Completion:** Published 131 in FY 12, 1,619 in total
  - account for 44,958 human remains and 1,114,179 associated funerary objects
  - no requests for extension of time to complete an inventory pending, no new requests in FY12
- o **Notices of Intent to Repatriate:** Published 57 in FY12, 602 in total
  - account for 211,065 unassociated funerary objects, 4,759 sacred objects, 7,735 objects of cultural patrimony, 1,372 objects both sacred and patrimony, and 292 undesignated
- o **Notices of Intended Disposition** (Federal Agency newspaper notices of new discoveries)
  - 130 Notices reported for 1,004 minimum number of individuals, 8,847 associated funerary objects, 64 unassociated funerary objects, and 4 objects of cultural patrimony
- o **Notices using the 10.11 rule:** 49 in FY 12, 82 in total, account for 868 human remains, 1,614AFO
- o **Notice processing FY 2012:** 162 received, 188 published; aging drafts (pre-2007) 16 remaining
- o **Culturally Unidentifiable Native American Human Remains (CUI):** 739 inventories, from 677 institutions
  - 127,268 minimum number individuals (MNI), 937,292 associated funerary objects (AFO)
  - 3,984 MNI transferred as CUI dispositions; 5,573 MNI subsequently culturally affiliated
- o **Culturally Affiliated Native American Human Remains:** 547 inventories, from 461 institutions
  - 57,258 MNI, 1,119,372AFO
- o **Total MNI in NAGPRA: CUI 121,695 (127,268 cui -5,573 cui now ca) and CA 57,258= 178,953**
- o **Grants:** Requested -\$2.7M; Awarded-\$1.6 in 33 project grants; \$186,397 in 16 repatriation grants
- o **Civil Penalties:**
  - 16 allegations of failure to comply in 19 institutions
  - Investigation complete 9 counts in 3 institutions; 144 counts, 27 institutions total; begun 12 counts 4 institutions
  - FY12 8 counts unsubstantiated (88.8%), 123 total; 1 count substantiated (11.1%), 21 total
  - Total of \$42,679.44 collected through civil penalty assessments and settlement agreements
- o **Review Committee:** Meeting Nov. 8-9, 2011 Reno, NV; May 9-10, 2012 Santa Fe, NM
- o **NAGPRA Regulations 43 CFR 10:**
  - 10.7 Unclaimed – proposed rule under review at OMB prior to publication
  - 43 C.F.R. Part 10 Minor amendments – proposed rule published April 18, 2012, Final rule under review in Department of the Interior
  - 43 C.F.R. Part 10 revised- consultation & drafting
- o **Technical Assistance and Reports:**
  - 184 hours of training to 1,418 participants in 29 events;
  - 982 views of the training videos on the National NAGPRA YouTube Channel
  - 4 FOIA requests
  - 2,000 email and telephone requests for technical information
  - 8 special reports in progress

## **NAGPRA: Administration of the Law**

This report covers activities of the National NAGPRA Program Fiscal Year 2012 (October 1, 2011 – September 30, 2012). The information reported is current as of close of business, September 30, 2012. Regular reports are available at: <http://www.nps.gov/nagpra/DOCUMENTS>.

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted on November 16, 1990, to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony, held in museum or Federal agency collections and when there are new discoveries on Federal or Indian land. The Act assigned implementation responsibilities to the Secretary of the Interior. Staff support is provided by the National NAGPRA Program, including:

- o Publishing notices for museums and Federal agencies in the Federal Register,
- o Creating and maintaining databases, including the Culturally Unidentifiable Native American Human Remains Inventories (CUI) Database,
- o Administering a grants program so that the Secretary may award grants to assist museums, Indian tribes, and Native Hawaiian organizations in fulfilling NAGPRA,
- o Investigating civil allegations to assist the Secretary in assessing civil penalties on museums that fail to comply with provisions of the Act,
- o Providing staff support to the NAGPRA Review Committee and for the NAGPRA Review Committee Annual Report to Congress,
- o Providing technical assistance where there are excavations and discoveries of cultural items on Federal and Indian lands,
- o Receiving inventories, summaries and updates thereto from museums and Federal agencies and request extensions of time for compliance from the Secretary of the Interior when appropriate,
- o Promulgating implementing regulations for review in the Department of the Interior, and
- o Providing technical assistance through training, website information, reports prepared for the Review Committee, supporting law enforcement investigations and direct personal service.

The National Park Service has compliance obligations for parks, separate from the National NAGPRA Program. National NAGPRA is the omnibus program, the constituent groups of which are all Federal agencies, museums that receive Federal funds, tribes and Native Hawaiian organizations, and the public.

## **Overview of Nation-Wide NAGPRA Implementation and Issues Impacting Repatriation**

### *Issues Affecting NAGPRA Constituents*

In its roles receiving NAGPRA compliance documents from museums and Federal agencies; providing staff support to the Secretary of the Interior to implement the grants, notices, regulations development, Review Committee and civil penalty functions in the law; and in providing training, technical information and outreach products to museums, tribes, Federal agencies and the public; the National NAGPRA Program receives input from the several NAGPRA constituencies, which provides insight to the NAGPRA process. The information is often anecdotal, received in conferences and compiled from questions asked of Program staff. It may help to add understanding to the status of nation-wide compliance with NAGPRA and trends. This information is also offered as it may assist the NAGPRA Review Committee in its collection of barriers and successes in NAGPRA implementation. There are several observations which may be made in the fiscal year 2012. In brief they are:

Museums and Federal agencies, in consultation with tribes and Native Hawaiian organizations (NHOs), continue to be very active in NAGPRA compliance. An indication of this activity is seen in the number of NAGPRA notices published in the Federal Register. Publication remains strong, with 188 NAGPRA notices published in FY 2012.

The number of Native American individuals for whom transfer of control has passed from museums or Federal agencies to tribes or NHOs is reported. Reported numbers from museums is voluntary, and thus is likely understated. Reported numbers from Federal agencies became required as of September 30, 2011, and annually thereafter in response to a recommendation made in the GAO report of July 28, 2010. The third in the series of reports is included in this report as Table 15. Federal collections were reduced by 9,000 MNI in this fiscal year.

Only about one-fourth of the Native American individuals represented in published notices are reported as transferred to tribes and NHOs. The barriers to requests for transfer vary and are known only anecdotally at this time. By year end, with more numbers reported, further study can be gauged. The dearth of places for reburial has emerged as a large and recurring issue. This year the Review Committee formed a sub-committee to study the matter.

Tribes and museums report lack of funds as a barrier to NAGPRA consultation and compliance. As state budgets are tightened, funds flowing to museums are reduced. Tribes report the lack of capacity within tribal administration as reasons for not applying for NAGPRA grants and pursuing NAGPRA claims. The year there were fewer NAGPRA grants and repatriation grants requested by tribes, as testament to the inability to administer more funds without more tribal staff.

Grant funds for project awards remain a fraction of total requested funds. Notably, requests for repatriation grants to fund transfer of possession and for reburial have remained strong. These are non-competitive awards made prior to apportionment of funds for competitive project grants, thus reducing the available funds for consultation project grants. While all repatriation grants continue to be satisfied, in FY 2012, several consultation/documentation project grants recommended for funding by the grants panel could not be funded. One project was funded in part, as all funds were put to use.

Tribes report frustration with the NAGPRA process in those areas where no compliance time frames are indicated in the regulations. Museums continue to report frustration with the restrictive nature of the 90-day rule and any rule which creates time restrictions. All parties to the NAGPRA process report confusion on the 90-day rule, as to when it begins and its impact. All parties to the NAGPRA process report confusion with certain definitions and the overlapping responsibilities of possession or control of

collections. The major regulations redrafting project is a response to the many issues present in the current regulations.

Several tribes report continuing issues with the references in published notices to “cultural items,” rather than to specific category of NAGPRA protected item, such as: sacred object or cultural patrimony.

Tribes report a barrier to repatriation due to the “is or was” possible ambiguity raised in the Ninth Circuit case of *Bonnichsen v. United States*, and to the application of any standard for determination of cultural affiliation higher than the standard found in the statute. However, Federal agencies and museums have moved forward to repatriate Native American human remains without a time barrier due to age.

Tribes report concern over the voluntary disposition of funerary objects associated with culturally unidentifiable human remains (AFOs of CUI), as indicated in the regulation 43 CFR 10.11. The notices for disposition of CUI still reference the AFOs, for context, even if these items are not part of the disposition, which preserves the identity of this population for future discussion.

Federal agencies continue to struggle with Federal agency collections in non-Federal repositories. They note the gap in law and regulation that leaves Federal agencies without recourse to request museums to notify agencies of Native American human remains and cultural items that may have been recovered from Federal lands. At present, Federal agencies face the labor intensive task of searching archives for permits and repeated review of National NAGPRA Program databases for reported inventories or summaries that reflect Federal land provenance.

All parties to the NAGPRA process are dealing with ever more fine-grained issues, giving rise to new questions and the need for continued and specialized training.

## **FY 2012 National NAGPRA Program Accomplishments in Brief**

The highlights of the year 2012 in the National NAGPRA Program and in the implementation of NAGPRA nation-wide can be seen in the statistics on the prior pages, but is also seen in events that go beyond the numbers. This section of the annual report is devoted to giving additional understanding to the National NAGPRA Program accomplishments, and specific program activities. Included also are goals and projects slated for action in FY 2013. The following is an executive summary of the detailed aspects of accomplishments in FY 2012.

### *Inventories and Summaries*

There were 23 Inventories and 17 Summaries received in FY 2012. Most inventories and all summaries received by the National NAGPRA Program since the inception of the program were digitized in the year and the hard copies catalogued for shipment to the National Archives and Records Administration (NARA) facility. In all future years, records will be stored electronically, with the hard copies sent annually to NARA. Originators of the records, and tribes receiving records, may replace lost records with electronic copies received from the Program, or visit the NARA facility. In the future, electronic records will be subject to consultation with tribes to redact the documents, which will be available on the Program databases, by a link from the database entry to the full document.

The accuracy of the information on the inventory and summary records is important to all those who rely on electronic access to the National NAGPRA Program databases. As inventories and summaries are received, they are updated on the electronic records, internally and on the public databases. Federal agency collections document are audited each year, with each of the reporting Federal agencies, to compile an overview report.

### *Notices*

Notice publication is a barometer of NAGPRA activity by museums and Federal agencies working with tribes to make decisions on the transfer of control of Native American human remains and cultural items. Each notice tells the story of historic collection practices and Federal agency and museum actions to consult with tribes and Native Hawaiian organizations to resolve interests in cultural items and the disposition of human remains. There were 188 notices published in FY 2012, for a total of 2,221 NAGPRA notices published since 1992. These notices account for 44,958 human remains, 1,114,179 associated funerary objects, 211,065 unassociated funerary objects, 4,759 sacred objects, 7,735 objects of cultural patrimony, 1,372 objects both sacred and patrimony, and 292 undesignated objects.

### *Grants*

Consultation/Documentation grants continue to play an important role in the NAGPRA process for tribes and museums. Each grant enables a consultation/documentation project to move forward where the process may be stalled absent the availability of funds. This year, as in past years, the Program received letters and comments from non-funded grant requestors disappointed over the inability to move forward on a NAGPRA project. Each year the grants closed out at the end of their five year span result in no funds lost by an awardee for failure to claim needed funds, in large part due to active communication between the NAGPRA Grants Coordinator and award recipients. For FY 2012 there were 33 consultation/documentation grants and 16 repatriation grants awarded.



### *Civil Enforcement*

During FY 2011, there was no civil penalty investigator. Thanks to the receipt of additional funds, the National NAGPRA Program published a request for proposals on a procurement contract addressing civil penalty work. Following receipt of a satisfactory proposal, the National NAGPRA Program was able to obligate these funds for a civil penalty analyst to perform the contract during FY 2012. As of September 30, the National NAGPRA Program was in the process of addressing the absence of a designated civil penalty investigator. Meanwhile, in FY 2012, investigation was completed regarding 9 counts of failure to comply with NAGPRA alleged against 2 different institutions. Eight of the counts were determined unsubstantiated and one count was determined substantiated. The Program employed the analyst to review and assess all open files and enter the data to the first electronic data system for these files.

### *Review Committee*

During FY 2012, the Native American Graves Protection and Repatriation Review Committee held two in-person meetings. Although there were no disputes heard, the agendas were packed with substantive reports submitted by tribes, museums, and Federal agencies on the successes and barriers to repatriation. The Review Committee responded to comments by establishing a sub-committee to consider recommendations on the barrier to repatriation occasioned by insufficient burial sites near places of exhumation. The Review Committee has been working on a detailed revision of dispute procedures in the event of a dispute. For the first time in its existence, the Review Committee annual report to Congress for the calendar year was delivered to Congress during the first week of the new year. The Committee members attended FACA committee leadership skill building sessions prior to each meeting.

### *Notices of Intended Disposition*

New excavations and removal of Native American human remains and cultural items from Federal and Indian lands after 1990 are not subject to the collections provisions of NAGPRA. The decisions of the Federal agencies appear in newspaper notices. As more Federal agencies collect prior decisions and report them to the National NAGPRA Program a deeper understanding of the full effort of Federal agencies in the NAGPRA process will be known.

### *Training*

As outlined in the FY 2012 Midyear Report, one of the goals for this year for was to launch the NAGPRA training DVDs online. This was accomplished in FY 2012. The National NAGPRA YouTube Channel, launched in May. It provides on-demand access to the NAGPRA training videos. In just part of the year, there were almost 1,000 visitors to the YouTube site. Also during FY 2012, the National NAGPRA Program provided 184 hours of training to 1,418 participants in 29 events, including 8 webinars. Webinars accounted for 27.6% of the training events and 22.6% of the training participants in FY 2012. Materials from webinars are posted on the Program website, where they are accessible to all, including those who were unable to attend the webinar.

### *Outreach*

Each member of the small National NAGPRA Program team responds to over 500 email and phone requests for technical information on an annual basis. This has been a satisfying experience for all involved as speaking to a NAGPRA constituent in the midst of the process can lead to better understanding, less compliance frustration and increased success in the process.

### *Website*

The National NAGPRA Program now provides web access databases for all compliance documents including CUI inventories, Culturally Affiliated (CA) inventories, summaries, Federal Register notices, Notices of Intended Disposition for Federal Agency action, and the Native American Consultation contact lists, as well as tribal and aboriginal land maps and other aides to consultation. The Program frequently posts information of importance to NAGPRA communities from warnings of system maintenance to training announcements, regulation publication for comments, and meetings. The National NAGPRA Program home page is one of the most frequently visited sites on the NPS system.

### *Information Management Systems*

Records are continually being added and checked against originator records to refine, update and audit information. Open access to information on these databases has led to increased communication between museums and Federal agencies on collections responsibility, has led to updates of records for better data quality and has supported consultation in which thousands of Native American human remains previously held as culturally unidentifiable have either been amended to culturally affiliated and been included in notices or have been listed in notices for disposition under the new CUI rule, 43 CFR 10.11, which became final two years ago.

A new project is underway in the National NAGPRA Program to digitize inventories submitted by museums and Federal agencies to allow better internal records management. At some point some of this information may be posted on the web. Greater transparency on NAGPRA through web access data has led to new issues as museums, tribes and Federal agencies further refine actions in the NAGPRA process and approach complex issues.

Emphasis was placed on digitizing compliance documents, entering repatriation numbers, and continuing to reconcile inventory and summary records. This is part of an overall records management plan to archive aging records. The next step in the process is to encourage paperless records and provide access to all compliance records through the web.

### *Technology development*

A contract was awarded to NuAxis to secure the internal database and begin converting files for migration to SQL. This will enable the Program to avail itself of low cost housing of electronic files.

### *Regulations*

As of September 30, a draft regulation to address the disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony removed from Federal lands after November 16, 1990 and not claimed under Section 3 (a) of NAGPRA is under review by the Office of Management and Budget. Once released for publication a lengthy comment period will begin.

Proposed minor amendments to revise the NAGPRA regulations at 43 C.F.R. for purposes of factual accuracy and consistency were published in the Federal Register on April 18, 2012. Public comment was invited for a 60-day period, ending June 18. As of September 30, a draft final rule was under review at the Department of the Interior.

During FY 2012, the discretionary review of the NAGPRA regulations (43 C.F.R. Part 10) was continuing in order to determine whether substantive revision of these regulations was warranted and, if so, how the rules should be revised. As of September 30, some proposals for revision of 43 C.F.R. Part

10 have been forwarded to the Office of the Solicitor for consideration and discussion. Review will continue within the Department of the Interior toward publication of proposed rules for a lengthy comment period.

*Goals in FY 2013 for the National NAGPRA Program*

Digitization Project:

1. Complete scanning inventories
2. Index files and insert metadata. Upload scanned compliance documents in the national NPS Integrated Resource Management Application (IRMA) for archival and retrieval.
3. Review compliance documents for digital image quality. Unusable scans will require contacting the institution for a clean electronic version.
4. Begin consultation with tribes on individual inventories for redaction of sensitive material.

Archive Project: Complete the archiving of all files from the inception of the Program through FY2012 and transfer the files to NARA. Archive electronic correspondence and digitize paper correspondence.

Complete outstanding research reports requested by the Review Committee.

Obtain a full time civil enforcement investigator to begin reducing the backlog of cases.

Maintain the pace of notice publication upon submission to eliminate all backlogs possible.

Post the FY 2013 Grants guidelines on the Program website by October 1, 2012. Continue outreach and education to potential grantees, while supporting existing grantees to successful conclusions.

Offer six or more webinars and live training during the year on popular and new topics.

Publish the proposed rule for Federal lands (10.7) and the final minor amendments.

Host two in-person and one telephonic meeting of the NAGPRA Review Committee.

Work with the ACHP to resolve the questions of the intersection of Section 106 and NAGPRA in a single training document to assist all practitioners.

Promote efficient and trouble-free application of the NAGPRA process through technical information, training and informational products.

## **Collections**

The sections of NAGPRA relating to collections describe the inventories, summaries, notices, grants, civil enforcement and the Review Committee, to implement NAGPRA

### **Inventories**

NAGPRA requires Federal agencies and museums that receive Federal funds to inventory collections of Native American human remains and associated funerary objects in consultation with potentially affiliated tribes. Inventories are itemized lists, submitted to the National NAGPRA Program containing cultural affiliation decisions of agencies and museums, one inventory for those individuals for whom cultural affiliation can be determined (CA) and one inventory for those individuals for whom cultural affiliation cannot be determined (CUI). Inventories identify the number of individuals in the collections, known as minimum number of individuals (MNI). Inventories are then divided into Notices of Inventory Completion (NIC), usually by tribes or by site, for publication in the Federal Register. It is the publication of the notice that establishes the rights of the tribe to request repatriation of culturally affiliated human remains, or disposition of culturally unidentifiable human remains. An NIC is not claims based. An NIC does not presuppose which of the listed tribes will ultimately request the human remains.

As of September 30, 2012, National NAGPRA received inventories from 1138 institutions (756 non-federal institutions and 382 Federal agency units). 264 statements of “no inventory required” have been received from 135 non-federal institutions and 129 Federal agency units. Of the 1,281 inventories received, 546 contain decisions as to cultural affiliation of Native American human remains, and 735 contain listings of culturally unidentifiable Native American human remains. Note: There may be duplication of reporting for collections as the law directs those museums with possession or control of collections to submit an inventory and several museums may have collections belonging to Federal agencies, where both the museum and Federal agency submitted an inventory. Although duplicate inventories can exist, the Program resolves the number of MNI, so as not to double count in overall reporting.

The decisions reflected in the inventories are those of the museum or Federal agency and not the National NAGPRA Program. The program facilitates the publication of notices, which contain the decisions of the originator and which serve to establish rights of lineal descendants and tribes or NHOS to request human remains and their funerary objects. The National NAGPRA Program does not audit the collections of the reporting museum or Federal agency unit. Inventories are self-reports of the collection.

The review process to publication of notices does entail matching the inventory records to the submitted notice. All MNI and associated funerary objects described in the notice must be contained in the inventory. In other words, notices are a reflection of what the museum or Federal agency has in its collections that are reported in their inventory. The inventory records on the databases link to the notices. In this manner a museum or Federal agency can see the MNI in notices and those awaiting listing in a notice.

The National NAGPRA Program does receive amended inventories when museums and Federal agencies change prior determinations after further consultation with tribes, or under the continuing duty to report new collections as specified in regulation. The future applicability rule, 43 C.F.R. 10.13, applies when new items are found in collections, there is a receipt of new collections, collections are affiliated with newly recognized tribes, or a museum receives initial Federal funding.

Table 1. Minimum number of individuals (MNI) and repatriated to tribes and NHOs FY12

| <b>INSTITUTION</b> | <b>MNI Total</b> | <b>CUI</b>     | <b>CA</b>     | <b>Repatriated</b> |
|--------------------|------------------|----------------|---------------|--------------------|
| Federal            | 33,700           | 14,629         | 19,071        | 10,836             |
| Museum             | 145,254          | 107,066        | 38,188        | 2,102              |
| <b>TOTAL</b>       | <b>178,954</b>   | <b>121,695</b> | <b>57,259</b> | <b>12,938</b>      |

Table 2. MNI and Associated funerary objects (AFO) and repatriated to tribes and NHOs FY12

| <b>INSTITUTION</b> | <b>MNI Total</b> | <b>MNI Repatriated</b> | <b>AFO</b>       | <b>AFO Repatriated</b> |
|--------------------|------------------|------------------------|------------------|------------------------|
| Federal            | 33,700           | 10,836                 | 293,701          | 142,544                |
| Museum             | 145,254          | 2,102                  | 1,762,999        | 33,674                 |
| <b>TOTAL</b>       | <b>178,954</b>   | <b>12m837</b>          | <b>2,056,700</b> | <b>176,218</b>         |

Table 3. MNI added in FY12, repatriated, and remaining in collections

| <b>INSTITUTION</b> | <b>FY11</b>    | <b>added fy12</b> | <b>MNI Total</b> | <b>MNI Repatriated</b> | <b>remaining</b> |
|--------------------|----------------|-------------------|------------------|------------------------|------------------|
| Federal            | 32,188         | 1,512             | 33,700           | 10,836                 | 21,352           |
| Museum             | 142,558        | 2,696             | 145,254          | 2,102                  | 143,152          |
| <b>TOTAL</b>       | <b>174,746</b> | <b>4,208</b>      | <b>178,954</b>   | <b>12,938</b>          | <b>164,504</b>   |

The above three tables report the status of Native American human remains in museum and Federal collections. The data is presented variously to account for: 1. MNI repatriations with collections divided into CUI and CA; 2. Repatriations of MNI showing the number of AFO also repatriated; and 3. adjusted totals from FY 11, with MNI added in FY 12, for those remaining after repatriation. The end number from one year would be the starting number in the next year, but for the addition of MNI added to collections over the course of any given year. Thus the audited and adjusted numbers are displayed in Table 3.

## Summaries

Summaries of the remainder of the Native American collections in the possession or control of Federal agencies and museums generally describe the Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony. The purpose of the summary is to inform consultation of museums and Federal agencies with tribes on possible claims. The Federal agency or museum is not expected to know, or make a decision in the summary, on whether the items in the summary will be NAGPRA items. Consultation occurs with interested tribes and culminates in a claim. Decisions to effectuate repatriation of unassociated funerary objects, sacred objects and objects of cultural patrimony are reflected in the published Notices of Intent to Repatriate (NIR). A NIR is claims-based.

To date, National NAGPRA received 1,580 summaries. Of these, 460 Statements of “no summary required” have been received.

There is a continuing obligation to comply with NAGPRA. Museums and Federal agencies receiving a new collection, or having collections of new Indian tribes, are to prepare or update inventories within 2 years and summaries within 6 months. If the museum receives Federal funds for the first time, summaries are due in 3 years and inventories in 5 years.

For more information on inventories and summaries, contact Mariah Soriano ([msoriano@nps.gov](mailto:msoriano@nps.gov)).

## Notices

Notice publication is a barometer of NAGPRA activity by museums and Federal agencies working with tribes to make decisions on the transfer of control of Native American human remains and cultural items. Museums and Federal agencies, in consultation with tribes and Native Hawaiian organizations (NHOs), continue to be very active in NAGPRA compliance. Publication remains strong, with 188 NAGPRA notices published in FY 2012.

There has been an increase in efficiency for processing notices from receipt to publication. At the beginning of FY 2005, there were 195 drafts in processing, of which 127 had been in process for over 5 years. At the end of FY 2011, there were 80 drafts pending publication, of which only 19 drafts were pending 5 years or more. At the end of FY 2012, there are 40 drafts pending publication, of which only 16 are pending 5 years or more. For more information on notices, contact Melanie O’Brien ([maobrien@nps.gov](mailto:maobrien@nps.gov)).

The table below reflects the status of submissions during this period:

Table 4. Notice Processing FY 2012.

| <b>Year<br/>2012</b> | <b>Beginning</b> | <b>Received</b> | <b>Removed by<br/>Originator*</b> | <b>Published</b> | <b>In<br/>Processing<br/>end of FY<br/>2012</b> |
|----------------------|------------------|-----------------|-----------------------------------|------------------|---|
| NIC                  | 71               | 109             | 13                                | 131              | 36  |
| NIR                  | 9                | 53              | 1                                 | 57               | 4   |
| <b>Total:</b>        | <b>80</b>        | <b>162</b>      | <b>14</b>                         | <b>188</b>       | <b>40</b>                                       |

\* Notice originators (museums or Federal agencies) may remove a notice from publication due to error in submission or to revise at a later time pending further consultation with tribes. The decision to remove a notice is that of the originator.

### *Notices of Inventory Completion (NIC)*

Since 1992, the National NAGPRA Program has published 1,619 Notices of Inventory Completion in the *Federal Register*, accounting for 44,958 human remains and 1,114,179 associated funerary objects. This year, a total of 131 Notices of Inventory Completion were published, accounting for 3,974 human remains and 90,867 associated funerary objects.

Notably, the number of human remains published during FY 2012 was the largest number since 1999. The number of associated funerary objects published in FY 2012 was the fourth largest since the first notices were published in 1992.

### *Notices of Intent to Repatriate (NIR)*

Since 1993, the National NAGPRA Program has published 602 Notices of Intent to Repatriate in the *Federal Register*, accounting for 211,065 unassociated funerary objects, 4,759 sacred objects, 7,735 objects of cultural patrimony, 1,372 sacred objects that are also cultural patrimony, and 292 undesignated cultural items. This year, a total of 57 Notices of Intent to Repatriate were published, accounting for 61,668 unassociated funerary objects, 427 sacred objects, 6,771 objects of cultural patrimony, and 118 sacred objects that are also objects of cultural patrimony.

Notably, more cultural items were published in Notices of Intent to Repatriate this year than in any other single year since 1993. Several Notices of Intent to Repatriate concerned over 1,000 unassociated funerary objects, and one notice published in September 2012 covered over 6,000 objects of cultural patrimony.

Table 5. Table of Notices Published FY 1992 through FY 2012. (CI – cultural item designation)

| Year  | Notices Published | MNI    | AFO       | UFO     | SO    | OCP   | SO&CP | CI* |
|-------|-------------------|--------|-----------|---------|-------|-------|-------|-----|
| 1992  | 2                 | 15     | 12,225    | 0       | 0     | 0     | 0     | 0   |
| 1993  | 14                | 40     | 60,071    | 0       | 1     | 0     | 7     | 0   |
| 1994  | 13                | 1,851  | 269       | 31,681  | 1     | 1     | 1     | 0   |
| 1995  | 36                | 806    | 18,710    | 6       | 243   | 3     | 4     | 0   |
| 1996  | 59                | 2,292  | 116,002   | 32      | 91    | 17    | 10    | 0   |
| 1997  | 122               | 1,311  | 50,606    | 5,061   | 116   | 67    | 92    | 0   |
| 1998  | 82                | 5,305  | 31,191    | 2,484   | 14    | 62    | 165   | 0   |
| 1999  | 108               | 6,434  | 31,263    | 680     | 106   | 70    | 78    | 0   |
| 2000  | 110               | 2,026  | 21,982    | 3,245   | 552   | 11    | 28    | 0   |
| 2001  | 199               | 2,965  | 167,046   | 25,583  | 6     | 25    | 5     | 0   |
| 2002  | 143               | 3,151  | 19,772    | 5,903   | 110   | 3     | 121   | 0   |
| 2003  | 85                | 666    | 31,419    | 1,195   | 101   | 4     | 135   | 0   |
| 2004  | 103               | 1,525  | 13,851    | 14,294  | 37    | 9     | 13    | 0   |
| 2005  | 108               | 2,342  | 60,418    | 1,997   | 2,183 | 3     | 5     | 0   |
| 2006  | 100               | 1,373  | 36,045    | 10,303  | 9     | 6     | 45    | 0   |
| 2007  | 108               | 747    | 15,619    | 27,036  | 28    | 22    | 64    | 215 |
| 2008  | 180               | 3,789  | 86,761    | 7,962   | 173   | 78    | 33    | 0   |
| 2009  | 200               | 1,071  | 227,854   | 6,712   | 532   | 567   | 16    | 77  |
| 2010  | 152               | 1,558  | 8,760     | 2,466   | 11    | 10    | 388   | 0   |
| 2011  | 109               | 1,717  | 13,448    | 2,757   | 18    | 6     | 44    | 0   |
| 2012  | 188               | 3,974  | 90,867    | 61,668  | 427   | 6,771 | 118   | 0   |
| TOTAL | 2,221             | 44,958 | 1,114,719 | 211,065 | 4,759 | 7,735 | 1,372 | 292 |

## CUI and Repatriation

In 2010 a report on NAGPRA by the Government Accountability Office of Congress (GAO) a question was posed as to the number of MNI repatriated to tribes and NHOs as a consequence of NAGPRA. The Secretary of the Interior, who has leadership in the administration of the law, requested that the Federal agencies comply with the GAO request on an annual basis by reporting their statistics to the National NAGPRA Program. Reporting is voluntary for museums, although keeping records in the museum is part of the regulatory process. The reported repatriations are reflected in Table 6. The broad picture of Federal agency progress in NAGPRA is reflected in Table 15. Federal Agencies Inventories and Repatriation Report to Review Committee FY2012.

The following table indicates the number of Native American individuals repatriated to tribes and NHOs as culturally affiliated and as culturally unidentifiable. For purposes of NAGPRA administration under the statute, the transfer of control of Native American human remains and cultural items from collections to tribes and NHOs is repatriation, regardless of whether the human remains in notices are culturally affiliated or culturally unidentifiable. The table gives the total MNI transferred from Federal agencies as well as from museums, which includes universities, although reporting transfer data from museums is voluntary.

Table 6. Repatriation Statistics FY12

| <b>INSTITUTION</b> | <b>MNI Total</b> | <b>MNI Notices</b> | <b>AFO Notices</b> | <b>MNI Repatriated</b> | <b>AFO Repatriated</b> |
|--------------------|------------------|--------------------|--------------------|------------------------|------------------------|
| Museums            | 140,080          | 27,812             | 901,080            | 2, 102                 | 33,674                 |
| Federal Agencies   | 33,700           | 17,132             | 213,099            | 10,836                 | 142,544                |
| <b>TOTAL</b>       | 173,780          | 44,944             | 1,114,179          | 12,938                 | 176,218                |

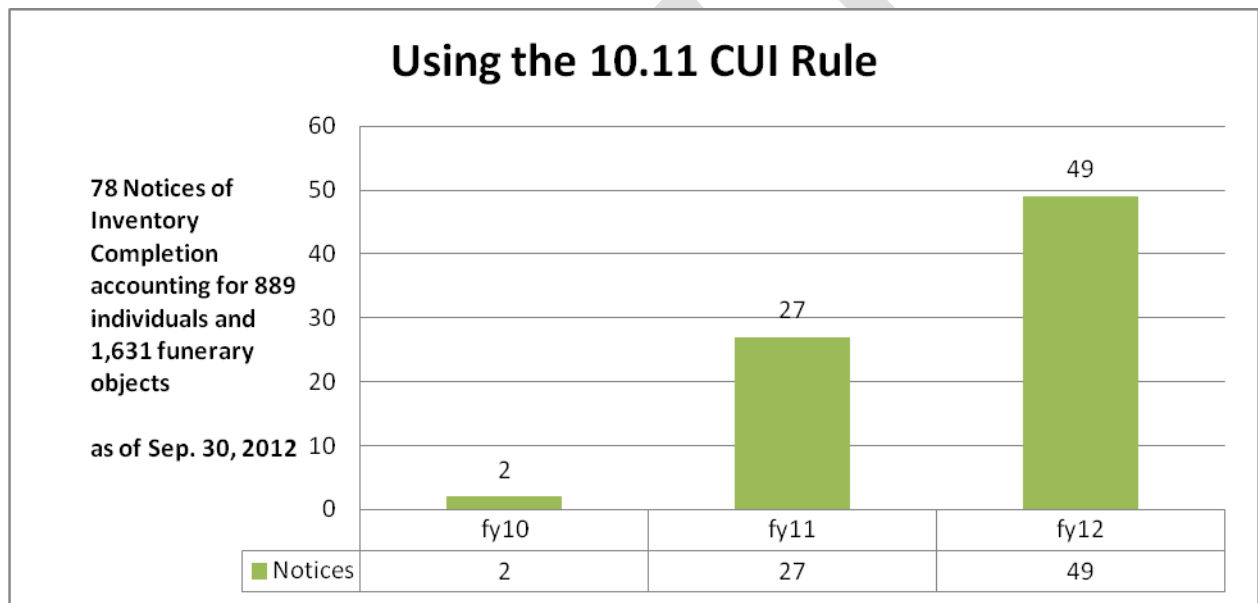
Note: As the National NAGPRA Program updates databases in consultation with the submitting Federal agency or museum, it will be possible to include in this report data on the size of the collections and the disposition of the collection relative to the whole. A template to accomplish additional detail in reporting is a work in progress with input from the NAGPRA Review Committee.

The rule for disposition of culturally unidentifiable Native American human remains in CUI inventories became final in March 2010, 43 CFR 10.11. Forty-nine (49) such notices were published between October 1, 2011, and September 30, 2012. The following table indicates the total number published under this rule is now 78 Notices of Inventory Completion, accounting for, at minimum, 889 individuals (MNI) and 1,631 associated funerary objects (AFO).

Prior to the effective date of 43 CFR 10.11, museums and Federal agencies could come to agreements with tribes and NHOs for disposition of CUI and request the Review Committee to consider a recommendation to the Secretary of the Interior for approval to publish a Notice of Inventory Completion reflecting the agreement. The pre-regulation decisions of the Review Committee are compiled in the supplemental report, NAGPRA Review Committee Actions, 25 USC 3006(c)(5); Culturally Unidentifiable Native American Human Remains, by Sally Butts.



**Table 7. Notices Using 10.11, the Disposition of Culturally Unidentifiable Native American Human Remains**



## Grants

### *Requests--*

The sum of \$1.747 million was available for grants in FY 2012. The grant application deadline for consultation/documentation grants was March 6, 2012. Repatriation grants are received on a rolling basis. A total of 49 grants applications were received: 33 consultation/documentation proposals and 16 repatriation funding requests. Of these, 28 were from Indian tribes and Native Hawaiian organizations and 21 were from museums. The total amount of grant requests in FY 2012 was \$ 2,688,881.

Grant applications for consultation/documentation projects are reviewed by an outside panel, which met on May 17-18, 2012. Similar to last year, the review process was automated and reviews were made electronically. In addition to eliminating the need to transport large numbers of documents, the database allowed reviewers to enter and edit their comments

Each application was reviewed and ranked by the independent panel. Applicants received an individualized letter from the grants coordinator along with feedback obtained from the panel, to assist them in preparing better grant proposals in the future and in administering successful projects.

\*\* One Repatriation Grant request was not funded in FY2012 due to a lack of funds, and will be funded in FY13. In FY2012 the NAGPRA Grants program experienced a drop in over-all applications from FY11 when the program received 37 requests for a total of \$2,776,201. There were 8 fewer tribal grant proposals and six fewer repatriation grant requests. Tribes received about half of the requested funds in FY2011 and FY2012. Possible factors for the decrease from FY2011 include the following:

- The current national economic situation makes project-based funding impractical given the demands placed on staff to fulfill ongoing, programmatic functions;
- A perception that chances for funding are poor and therefore the time needed to submit an application could be better spent elsewhere, in 2011 there was an exceptionally high quality group of proposals and competition was stiff;
- A lack of museum and tribal staff and resources to take on new projects;
- NAGPRA is handled by the tribe or museum when a situation or request arises, rather than on a project by project basis;
- Tribes may be inundated with current projects, thus the flux seen over time in tribal requests, unlike museum requests which remain constant over time;
- The funding that the tribe or museum would like to request from NAGPRA is considered ineligible under NAGPRA grants, ie, funding for Federal agency compliance.

Those who participated in NAGPRA Grants training or took advantage of the pre-review process were highly represented among FY2012 grantees; of the 21 applicants who received grants, 10 applicants (48%) submitted applications for pre-review. The program received 14 drafts, meaning that 72% of all drafts reviewed resulted in a grant. In addition, three FY2012 grantees (14%) attended the training *Writing and Managing a NAGPRA Grant* in St. Paul, MN May 4-5, 2011 through the National NAGPRA Program's partnership with the National Preservation Institute. Another factor to note is the success rate of applicants who were declined in FY2011. Of the seven applicants who were declined in FY2011, three were successful in their attempt for an FY2012 grant. It is interesting to note that all three took advantage of the pre-review process whereas those who were declined did not.

These figures suggest that applicants who contact the NAGPRA grants program early in the year, take advantage of trainings, and submit a grant application for pre-review, have a good chance of receiving a NAGPRA grant. Therefore, continued outreach by the grants program on a year-round basis is important. Second, face-to-face contact and one-on-one assistance that is ongoing continues to have a strong influence on the success rate of applicants.

*Grants Management---*

Sangita Chari, Grants Coordinator, and Vedet Coleman, Grants Management Specialist, continued to work together to strengthen grantee compliance. All 2007 grantees were closed by the end of this fiscal year with minimal funds returned to the Treasury Department.

Two webinars were presented on NAGPRA Grants. The annual grants management training which covers administrative and programmatic reporting, specifically issues such as reporting requirements and procedures for requesting a modification to the grant was held on October 25, 2011. On December 6, 2011 the National NAGPRA Program presented "Applying for a NAGPRA Grant."

For more information on grants, contact: Sangita Chari, Grants Coordinator, at [Sangita.Chari@nps.gov](mailto:Sangita.Chari@nps.gov).

Table 8. Consultation/Documentation Grants Awarded in FY 2012

| <b>Name of Awardee</b>   | <b>Amount</b>    |
|--|------------------|
| <b>Arizona State Museum</b>  | <b>\$ 89,671</b> |
| <b>Ball State Univ., Dept. of Anthropology</b>                             | <b>\$ 90,000</b> |
| <b>Bear River Band of the Rohnerville Rancheria</b>                        | <b>\$ 89,990</b> |
| <b>Delaware Tribe of Indians</b>   | <b>\$ 89,554</b> |
| <b>Denver Museum of Nature and Science</b>                                 | <b>\$ 39,676</b> |
| <b>Dry Creek Rancheria of Pomo Indians of California</b>                   | <b>\$ 63,682</b> |
| <b>Fort Collins Museum</b>   | <b>\$ 57,522</b> |
| <b>Karuk Tribe of California</b>   | <b>\$ 88,673</b> |
| <b>Marin Museum of the American Indian</b>                                 | <b>\$ 90,000</b> |
| <b>Oregon State Parks and Recreation Department</b>                        | <b>\$ 82,260</b> |
| <b>Peabody Museum of Archaeology and Ethnology,<br/>Harvard University</b> | <b>\$ 90,000</b> |
| <b>Smith River Rancheria, California</b>                                   | <b>\$ 90,000</b> |
| <b>Sonoma State Univ., Anthropological Studies Center</b>                  | <b>\$ 49,800</b> |
| <b>State University of New York</b>  | <b>\$ 49,500</b> |
| <b>Univ. of Colorado Museum, Boulder</b>                                   | <b>\$ 36,749</b> |

|  |                    |
|--|--------------------|
| <b>Univ. of Denver, Dept. of Anthropology/Museum of Anthropology</b> | <b>\$ 76,453</b>   |
| <b>Univ. of Montana, Forensic Anthropology Collection</b>            | <b>\$ 89,066</b>   |
| <b>Univ. of Washington, Burke Museum</b>                             | <b>\$ 89,882</b>   |
| <b>Univ. of Wisconsin, Madison, Dept. of Anthropology</b>            | <b>\$ 27,410</b>   |
| <b>Wiyot Tribe</b>   | <b>\$ 90,000</b>   |
| <b>Yurok Tribe of the Yurok Reservation</b>                          | <b>\$ 90,000</b>   |
| <b>TOTAL</b>   | <b>\$1,559,888</b> |

Table 9. Repatriation Grants Awarded in FT 12

| <b>Repatriation Grants: Name of Awardee</b> | <b>Amount</b>     |
|---|-------------------|
| Cheyenne and Arapahoe Tribe                 | \$ 15,000         |
| History Colorado                            | \$ 15,000         |
| History Colorado                            | \$ 15,000         |
| Homer Society                               | \$ 14,719         |
| Hoonah Indian Association                   | \$ 4,723          |
| Ione Band of Miwok Indians                  | \$ 15,000         |
| Ione Band of Miwok Indians                  | \$ 12,888         |
| Jena Band of Choctaw Indians                | \$ 15,000         |
| Karuk Tribe                                 | \$ 15,000         |
| Peabody Museum                              | \$ 13,450         |
| Pit River Tribe                             | \$ 7,232          |
| Saginaw Chippewa Tribe                      | \$ 13,400         |
| University of Colorado Museum               | \$ 10,296         |
| White Mountain Apache Tribe                 | \$ 6,096          |
| Wiyot Tribe                                 | \$ 13,593         |
| <b>TOTAL</b>                                | <b>\$ 186,397</b> |

Table 10. Grants Requested and Awarded FY 1994 – FY 2012

| TRIBES |                                 |                     |                   | MUSEUMS |                                 |                     |                   |
|--------|---------------------------------|---------------------|-------------------|---------|---------------------------------|---------------------|-------------------|
| Year   | Number of Applications Received | Amount Requested \$ | Amount Awarded \$ | Year    | Number of Applications Received | Amount Requested \$ | Amount Awarded \$ |
| 1994   | 106                             | 6,091,594           | 1,023,200         | 1994    | 113                             | 6,643,200           | 1,116,800         |
| 1995   | 63                              | 3,842,289           | 1,387,925         | 1995    | 56                              | 2,408,165           | 854,075           |
| 1996   | 54                              | 3,490,414           | 1,150,985         | 1996    | 33                              | 1,530,039           | 946,905           |
| 1997   | 54                              | 3,148,112           | 1,425,600         | 1997    | 20                              | 1,055,915           | 550,650           |
| 1998   | 61                              | 3,547,254           | 1,557,165         | 1998    | 23                              | 1,025,061           | 775,720           |
| 1999   | 57                              | 3,296,264           | 1,648,220         | 1999    | 22                              | 2,251,415           | 687,780           |
| 2000   | 84                              | 4,814,432           | 1,629,170         | 2000    | 27                              | 1,276,774           | 622,830           |
| 2001   | 53                              | 3,048,377           | 1,802,180         | 2001    | 20                              | 1,042,261           | 635,820           |
| 2002   | 57                              | 3,460,873           | 1,708,268         | 2002    | 16                              | 961,775             | 537,552           |
| 2003   | 60                              | 3,708,782           | 1,703,194         | 2003    | 12                              | 668,730             | 497,806           |
| 2004   | 41                              | 2,369,685           | 1,535,659         | 2004    | 17                              | 1,037,649           | 646,341           |
| 2005   | 41                              | 2,344,891           | 918,560           | 2005    | 17                              | 1,060,299           | 471,669           |
| 2006   | 52                              | 2,999,228           | 1,500,965         | 2006    | 17                              | 825,172             | 393,893           |
| 2007   | 36                              | 2,100,960           | 1,247,243         | 2007    | 16                              | 815,239             | 548,825           |
| 2008   | 29                              | 1,691,220           | 1,089,554         | 2008    | 12                              | 559,317             | 490,258           |
| 2009   | 51                              | 2,674,813           | 753,809           | 2009    | 31                              | 1,809,161           | 1,092,787         |
| 2010   | 37                              | 1,959,886           | 938,721           | 2010    | 20                              | 1,227,296           | 811,328           |
| 2011   | 36                              | 1,710,093           | 897,774           | 2011    | 23                              | 1,306,530           | 848,226           |
| 2012   | 28                              | 1,472,720           | 736,043           | 2012    | 21                              | 1,216,161           | 1,010,213         |

## Civil Enforcement

Under NAGPRA, civil penalties may be imposed upon museums that have failed to comply with the requirements of the law. For more information on civil penalties, contact David Tarler, Enforcement Coordinator, National NAGPRA Program ([David\\_Tarler@nps.gov](mailto:David_Tarler@nps.gov)).

The civil penalties rule (43 C.F.R. 10.12) was published as an interim rule in 1997 and as a final rule in 2003. The first civil enforcement began in 2006. The NAGPRA regulations set forth 9 ways that a museum might fail to comply with the Act or its regulations (43 C.F.R. 10.12 (b)(1)):

- i. Sale or transfer of NAGPRA items contrary to NAGPRA.
- ii. Failure to complete a summary.
- iii. Failure to complete an inventory.
- iv. Failure to notify tribes within 6 months after completion of the inventory.
- v. Refusal to repatriate.
- vi. Repatriation prior to publishing a notice in the Federal Register.
- vii. Failure to consult with tribes and/or lineal descendants.
- viii. Failure to inform recipients that items have been treated with pesticides.
- ix. Failure to offer to transfer control of culturally unidentifiable human remains upon receipt of a claim by an appropriate “tribal land” tribe or “aboriginal land” tribe.

In May 2005, through a Secretarial Order, the Secretary of the Interior gave the National NAGPRA Program the responsibility of providing staff support on civil penalties to the Secretary’s designee, the Assistant Secretary for Fish and Wildlife and Parks. From the beginning of FY 2006 through FY 2010, the NAGPRA civil penalty coordinator, who serves in the National NAGPRA Program, and a National Park Service law enforcement officer worked as a team to support the Assistant Secretary. During that time, the civil penalties investigative function was housed within the National Park Service’s Law Enforcement, Security and Emergency Services (LESES) branch. Civil penalty investigations were carried out by NPS law enforcement officer Bob Palmer. In FY 2011, LESES could not accommodate the National NAGPRA Program’s civil penalty investigative needs. Consequently, since FY 2011, there has not been a designated civil penalty investigator.

Toward the end of FY 2011, thanks to the receipt of additional funds from NPS, the National NAGPRA Program published a request for proposals on a procurement contract addressing civil penalty work. Following receipt of a satisfactory proposal, the National NAGPRA Program was able to obligate these funds for a civil penalties analyst to perform certain contract during FY 2012. Meanwhile, the National NAGPRA Program has continued to address the absence of a designated civil penalty investigator.

Regarding the contractor-analyst’s scope of work, the service to be provided involves digesting the information in written allegations of museums failure to comply with the requirements of NAGPRA and determining the facts needed to determine whether or not a particular allegation is substantiated or unsubstantiated. As envisioned, there were to be two parts to the scope of work in the services contract:

(a) Digesting allegations of museum failure to comply. First, the analyst reviews all the written allegations received from 1996 to date, and (1) gives each allegation an identifier; and (2) for each allegation, identifies which of the nine possible counts of museum failure to comply were alleged. After this work product is approved by the civil penalty coordinator, the contractor enters data in the civil penalty files into a National NAGPRA Program electronic data system. As additional data are obtained during the course of the contract, the analyst updates and supplements the data in the system. In addition, the analyst produces a documents that identifies the museum, counts alleged, year alleged, and status of the matter (i.e., open/under active investigation/under review and issuance at the Department/closed), and annotates each of the counts alleged, as set forth at 43 C.F.R. 10.12.

(b) Determining the facts required in order to determine whether or not a particular allegation is substantiated or unsubstantiated. After the candidate annotates the counts alleged, and working according

to a prioritized plan of action, the analyst determines the facts needed in order to show that the counts alleged are either substantiated or unsubstantiated. This work requires the analyst to review the National NAGPRA Program's files and databases for the existence of compliance documents. In addition, the analyst determines what, if any, additional facts would need to be obtained from the museum alleged to have failed to comply, or from the party or parties alleging the failure to comply.

### *Allegations of Failure to Comply: A Snapshot*

Through FY 2011, 98 separate letters alleging failure to comply with the requirements of NAGPRA have been received. Most of these allegation letters allege multiple counts of failure to comply against a single institution, and many of the letters name more than one institution in the same letter. The number of written allegations, by year, is as follows:

Table 11: Total Number of Written Allegation Letters Received (by Year).

| Year | Total # of Allegations |
|------|------------------------|
| 1996 | 1                      |
| 1997 | 5                      |
| 1998 | 3                      |
| 1999 | 1                      |
| 2000 | 2                      |
| 2001 | 2                      |
| 2002 | 5                      |
| 2003 | 4                      |
| 2004 | 4                      |
| 2005 | 8                      |
| 2006 | 3                      |
| 2007 | 7                      |
| 2008 | 6                      |
| 2009 | 5                      |
| 2010 | 13                     |
| 2011 | 13                     |
| 2012 | 16                     |

### *FY 2012: Investigations and Findings*

During FY 2012, investigation was completed regarding nine (9) counts of failure to comply alleged against three (3) different museums. Of the completed investigations, eight (8) of the alleged counts (88.8%) were determined to be unsubstantiated and one (1) of the alleged counts (11.1%) was determined to be substantiated. Also during FY 2012, investigation had begun, but had not been completed, regarding three (3) counts of failure to comply alleged against two (2) different museums.

### *New Allegations Received in FY 2012*

During FY 2012, sixteen (16) individual letters were received, alleging that nineteen (19) different museums had failed to comply. By the end of the fiscal year, investigation was completed regarding nine (9) counts of failure to comply alleged against three (3) different museums. Also, investigation had begun, but had not been completed, regarding three (3) counts of failure to comply alleged against two (2) different museums.

Table 12: Disposition of Allegations of Failure to Comply, Based on the Number of Museums in Allegations (FY 2012 and Total).

| # Museums Represented in Allegations | # Museums in Allegations Investigated | # Museums in Allegations Investigated With One or More Substantiated Counts | # Museums in Allegations Investigated Without a Single Count Substantiated | # Museums in Allegations Remaining to Be Investigated |
|--------------------------------------|---------------------------------------|---|--|---|
| <b>FY 2012</b>                       | <b>19</b>                             | <b>3</b>  | <b>2</b>   | <b>16</b>   |
| Total                                | 77                                    | 27  | 13   | 50  |
| 1996-2012                            |                                       |   |  |   |

*FY 2006-2012: Investigations and Findings*

Through FY 2012, the completed investigation of one hundred and forty-four (144) counts of alleged museum failure to comply, made against twenty-seven (27) different museums, has yielded a determination of failure to comply regarding twenty-one (21) of those alleged counts, involving fourteen (14) museums, and a determination that the allegation was unsubstantiated on one hundred and twenty-three (123) counts. Thus, through FY 2012, the percentage of investigated museums that were determined to have failed to comply with the requirements of NAGPRA on at least one count is 51.5%, whereas the percentage of alleged counts that were investigated and determined to be substantiated is 14.6%.

The twenty-one (21) substantiated counts of failure to comply were comprised of one count of sale or transfer of NAGPRA cultural items contrary to NAGPRA (43 C.F.R. 10.12 (b)(1)(i)); two counts of failure to complete a summary (43 C.F.R. 10.12 (b)(1)(ii)); nine counts of failure to complete an inventory (43 C.F.R. 10.12 (b)(1)(iii)); six counts of refusal to repatriate (43 C.F.R. 10.12 (b)(1)(v)); and three counts of failure to consult with tribes (43 C.F.R. 10.12 (b)(1)(vii)). The trends in allegations made and violations substantiated are reflected in the following chart.

Table 13: Substantiated Counts of Failure to Comply by Category (FY 2012 and Total).

| Violation Type                | FY 2011 | Total |
|-------------------------------|---------|-------|
| i. Transfer                   | 0       | 1     |
| ii. No Summary                | 0       | 2     |
| iii. No Inventory             | 1       | 9     |
| iv. Not Notify                | 0       | 0     |
| v. Not Repatriate             | 0       | 6     |
| vi. No Notice                 | 0       | 0     |
| vii. Not Consult              | 0       | 3     |
| viii. Pesticides              | 0       | 0     |
| ix. Not Offer to Transfer CUI | 0       | 0     |



### *Penalty Assessments and Settlement Agreements*

A museum receiving a notice of failure to comply has 45 days to take specific action, as set forth in the NAGPRA regulations, after which a penalty assessment may issue. To date, nine notices of penalty assessment, involving nine different museums, have been issued by the Assistant Secretary. In addition, one museum paid an amount to satisfy a settlement agreement. In five additional cases, the Assistant Secretary determined that the institution of a civil penalty was not an appropriate remedy (43 C.F.R. 10.12 (d)). As of the end of FY 2012, \$42,679.44 in penalties has been paid by nine (9) museums.

### *Administrative Hearings*

A museum receiving a notice of failure to comply or a notice of penalty assessment has 45 days from the date of receipt of the notice to request an administrative hearing. To date, one museum has requested a hearing. As a settlement was reached prior to the hearing, a motion to dismiss the case was granted by the administrative law judge assigned to hear the matter.

### **Review Committee**

The entire NAGPRA process pertaining to collections is within the jurisdiction of the Native American Graves Protection and Repatriation Act Review Committee, which has broad authority under the law to: make recommendations to the Secretary of the Interior on implementation of the Act; offer fact finding and aid resolution of disputes; and make suggestions to further decision-making and implementation of the Act.

During FY 2012, the following people served on the Native American Graves Protection and Repatriation Review Committee: Sonya Atalay, Alexander Barker, Linda Lee Farm, Eric Hemenway, Adrian John, Rosita Worl, and Mervin Wright, Jr. The Review Committee's Designated Federal Official complies with all filings required by the Federal Advisory Committee Act (FACA). The Review Committee operated in the year under a charter from the Department of the Interior, which runs until November 24, 2012.

For more information on the Review Committee, contact Sherry Hutt, Designated Federal Official (Sherry\_Hutt@nps.gov).

On November 8-9, 2011, the Review Committee met in Reno, Nevada. The meeting was hosted by the National Judicial College on the campus of the University of Nevada, Reno. At the meeting, the Review Committee heard a request by Los Angeles County, California that the Review Committee recommend to the Secretary that an agreement to reinter human remains and associated funerary objects determined to be culturally unidentifiable proceed. As Los Angeles County could not determine that any particular human remains were, more likely than not, "Native American," as this term is defined in NAGPRA, the Review Committee concluded that it could not make a determination whether the human remains and funerary objects in question are Native American and subject to NAGPRA. The Review Committee also expressed its belief that LA County could proceed with the proposed reinterment under other applicable law (i.e. state law, not pursuant to NAGPRA). Finally, the Review Committee requested that the Secretary's letter to Los Angeles County on this matter reflect this conclusion and belief.

In addition, the Review Committee approved its annual report to Congress for FY 2011, as required by NAGPRA (25 U.S.C. 3006 (h)); appointed a subcommittee to draft the Review Committee's report to Congress for FY 2012; discussed and reviewed the Review Committee's dispute procedures and findings procedures; heard presentations from Federal agencies on agency compliance with NAGPRA; and heard public comment on the progress made, and any barriers encountered, in implementing NAGPRA.

On May 9-10, the Review Committee met in Santa Fe, New Mexico. During the meeting, the Review Committee commented on the proposed minor amendments to revise the NAGPRA regulations at 43 C.F.R. Part 10, for purposes of

factual accuracy and consistency, which were published in the Federal Register on April 18, 2012. In addition, the Review Committee discussed and reviewed its dispute procedures and findings procedures; heard a presentation on the role of the National Archives and Records Administration's role in preserving and making accessible NAGPRA records; heard presentations from Federal agencies and Indian tribes on NAGPRA compliance; and heard public comment on the progress made, and any barriers encountered, in implementing NAGPRA. The Review Committee established a sub-committee to study reburial on Federal lands, a pervasive issue facing NAGPRA communities.

The Review Committee's procedures may be found at <http://www.nps.gov/nagpra/REVIEW/Procedures.htm>. Nominations for the seven-member Review Committee vacancies are solicited through a notice published in the Federal Register. The information on all of the nominees then proceeds through a review process in the Department of the Interior, culminating in a decision by the Secretary of the Interior.

#### Review Committee Databases of Culturally Unidentifiable Human Remains:

As part of providing administrative support for the Review Committee, the National NAGPRA Program has compiled the Review Committee's inventory of culturally unidentifiable (CUI) Native American human remains, as required by 25 U.S.C. 3006 (c)(5). The program has entered inventories containing determinations of culturally unidentifiable Native American human remains accounting for 121,695 individuals for whom cultural affiliation has not yet been determined and 937,292 funerary objects associated with those individuals. The number of CUI subsequently culturally affiliated to date is 5,573, and the number of CUI transferred by a disposition to a tribe is a total of 3,984. The on-line CUI Inventories database continues to maintain the full list of MNI as CUI, transferred to CA and in notices, as a means to track the total population. Ideally, the population of CUI will diminish and in future years the database can maintain those MNI not yet in notices or designated as CA. This is an evaluation of the use of the database the Review Committee might assess in future years.

Requests for recommendations for disposition of CUI can still be presented to the Review Committee, which made recommendations to the Secretary pending the process for disposition of CUI in 43 CFR 10.11, and thereafter will make in limited circumstances, where 10.11 does not apply. Notices of Inventory Completion for disposition of CUI are published upon receipt of Secretarial authorization, to allow 30 days for competing claims to be lodged prior to transfer of control.

Prior to 43 CFR 10.11, there were 66 disposition authorizations granted by the Secretary out of 83 requests, accounting for 1,568 individuals. See the supplemental report on Review Committee actions on CUI requests by Sally Butts, to be posted to the National NAGPRA Program website under Reports to the Review Committee. In this reporting period there were no requests for disposition recommendations. The Review Committee has established guidelines and a matrix for bringing a request for disposition recommendation, which can be found at <http://www.nps.gov/nagpra/REVIEW/Procedures.htm>. The guidelines are updated for the operation of the new rule and new notice templates are available at <http://www.nps.gov/nagpra/NOTICES/INDEX.HTM>.

Dispositions of Culturally Unidentifiable Native American Human Remains referred to and acted upon by the Review Committee historically are available on the website at <http://www.nps.gov/nagpra/REVIEW/INDEX.HTM>.

## Land

### *Excavations and Discoveries*

#### **Notices of Intended Disposition**

Notices of Intended Disposition published in newspapers by Federal agencies are submitted to the National NAGPRA Program. There are 130 Notices of Intended Disposition reported by Federal agencies to date, accounting for 1004 individuals, 8847 associated funerary objects, 64 unassociated funerary objects, and 4 objects of cultural patrimony. A listing of these notices is available on the online Notices of Intended Disposition Database.

## Regulations

In FY 2012, action occurred with respect to the following regulatory matters:

- Following review by the Department of the Interior, a rule drafted by the National NAGPRA Program, to be published in the Federal Register as a proposed rule and codified at 43 C.F.R. 10.7, went to the Office of Management and Budget for review. This rule would implement section 3(b) of NAGPRA (25 U.S.C. 3002 (b)) by providing procedures for the disposition of unclaimed human remains, funerary objects, sacred objects, and objects of cultural patrimony discovered on Federal lands after November 16, 1990. Pursuant to section 8 (c)(7) of NAGPRA (25 U.S.C. 3006 (c)(7)), it was developed in consultation with the Review Committee.
- Following review by the Department of the Interior, proposed minor amendments to 43 C.F.R. Part 10 drafted by the National NAGPRA Program in FY 2011 were published in the Federal Register on April 18, 2012. The proposed minor amendments revise the already-published rules for factual accuracy and consistency throughout 43 C.F.R. Part 10. Public comment was invited for a 60-day period, ending June 18. As of September 30, a draft final rule was under review at the Department of the Interior.
- The National NAGPRA Program has been undertaking a discretionary review of the NAGPRA regulations at 43 C.F.R. Part 10. This review is the first such comprehensive review of the regulations since their initial promulgation, in 1995. The purpose of this review is to determine whether substantive revision of the regulations is warranted and, if so, how the rules should be revised. As of September 30, some proposals for revision of 43 C.F.R. Part 10 have been forwarded by the National NAGPRA Program to the Office of the Solicitor for consideration and discussion.
- Every three years the NAGPRA regulations are subject to review and renewal under the Paperwork Reduction Act. This is a two notice and comment period process. The first notice published in March for comments due to the Program ending in May and the second notice published in August with comments to OMB. Timely submission to OMB was accomplished. As of September 30, 2012, OMB had not completed its review. The renewal period will date for three years from the date of the renewal. In the interim, the regulations are deemed valid. There is no time limit on OMB review.

For more information on regulations, contact David Tarler (David\_ [Tarler@nps.gov](mailto:David_Tarler@nps.gov)).

## Technical Assistance

### Training

The National NAGPRA Program provides training offered by the program and hosted by tribes, museums and Federal agencies. During this reporting period, staff provided 184 hours of training in 29 events to 1,418 participants, in addition to supplying materials for training given by others. For more information on training, contact David Tarler (David\_Tarler@nps.gov).

In FY 2012, the National NAGPRA Program provided training and program presentations as summarized below, with the number of attendees:

Table 14. Training Offered in FY 2012, in person and webinar, with the number of participants and hours

| DATE       | STATE | SPONSOR & TITLE  | # ATTENDED    |
|------------|-------|--|---------------|
| Oct. 17-20 | AZ    | Departments of the Interior, Justice, and Homeland Security: "Cultural Property: Criminal and Civil Enforcement Seminar" | 30 (35 hours) |
| Oct. 25    | CA    | National Preservation Institute (NPI):   | 27 (8 hrs.)   |

“NAGPRA: Summaries, Inventories, and Federal Register Notices” and “NAGPRA: Accessing and Utilizing the Databases”

|           |         |  |              |
|-----------|---------|--|--------------|
| Oct. 25   | webinar | National NAGPRA Program: “NAGPRA Grants Administration”  | 49 (2 hrs.)  |
| Oct. 26   | CA      | NPI: “NAGPRA: Determining Cultural Affiliation”  | 26 (8 hrs.)  |
| Oct. 27   | SC      | Southeastern Museums Conference, Annual Meeting: “De-Mystifying the Native American Graves Protection and Repatriation Act”                            | 21 (4 hrs.)  |
| Nov. 7    | NV      | National NAGPRA Program: “NAGPRA Basics”   | 68 (8 hrs.)  |
| Dec. 6    | webinar | National NAGPRA Program: “Applying for a FY 2012 NAGPRA Grant”   | 21 (2 hrs.)  |
| Feb. 2    | webinar | National NAGPRA Program: “Complying with Section 3 of NAGPRA on Tribal Land”   | 49 (2 hrs.)  |
| Feb. 14   | DC      | United South and Eastern Tribes: “Current Issues NAGPRA”   | 35 (1 hr.)   |
| Feb. 22   | DC      | American University, Washington College of Law: Class presentation – “ARPA and NAGPRA Enforcement”   | 12 (3 hrs.)  |
| March 7-8 | MT      | Bureau of Indian Affairs & Tribal Historic Preservation Officers: “NAGPRA and Tribal Code”   | 25 (6 hrs.)  |
| March 21  | DC      | American University, Washington College of Law: Class presentation – “Legal Issues in NAGPRA”  | 12 (3 hrs.)  |
| March 22  | webinar | National NAGPRA Program: “What Difference Does It Make?: NAGPRA Inventories, Summaries, and Federal Register Notices”                                  | 40 (2 hrs.)  |
| April 3   | OK      | USDA Forest Service – Tribal Liaison Program and the Choctaw Nation of Oklahoma, 11 <sup>th</sup> Annual “To Bridge a Gap” Conference: “NAGPRA Update” | 300 (4 hrs.) |
| April 12  | webinar | National NAGPRA Program: “NAGPRA Open Forum”   | 26 (2 hrs.)  |
| April 19  | VA      | NPI: “Archaeological Curation and Collections Management” training: “NAGPRA for Museums”   | 17 (2 hrs.)  |
| April 24  | CO      | NPI: “NAGPRA: Databases, Summaries, Inventories, and Notices”  | 27 (8 hrs.)  |
| April 25  | CO      | NPI: “NAGPRA: Determining Cultural Affiliation   | 29 (8 hrs.)  |
| April 26  | CO      | Rocky Mountain Mineral Law Foundation: “Applying   | 260 (4 hrs.) |

## NAGPRA”

|             |                       |   |                 |
|-------------|-----------------------|---|-----------------|
| May 1       | GA                    | Army National Guard: “NAGPRA: Summaries, Inventories, and Notices”  | 22 (8 hrs.)     |
| May 8       | NM                    | National NAGPRA Program: “NAGPRA: Applying the Basics”  | 88 (8 hrs.)     |
| May 22-23   | NM                    | National Preservation Institute: “NAGPRA: Writing and Managing a Successful Grant”                                  | 12 (16 hrs.)    |
| June 5-6    | FL                    | Florida Bureau of Archaeological Research: “NAGPRA: An Overview”  | 22 (8 hrs.)     |
| June 18     | DC                    | The George Washington University, Museum Studies Program, Collections Management Course: “Overview of NAGPRA”       | 5 (2 hrs.)      |
| June 28     | webinar               | National NAGPRA Program: “NAGPRA Notices: Types, Process, and Content”  | 48 (2 hrs.)     |
| July 20     | CA<br>Training Course | National Park Service, Albright Training Center, – Cultural and Natural Resources Law for Superintendents: “NAGPRA” | 26 (8 hrs.)     |
| July 25     | webinar               | National NAGPRA Program: “NAGPRA: Developing State Protocols”   | 73 (2 hrs.)     |
| Sept. 13    | webinar               | National NAGPRA Program: “NAGPRA Databases”   | 15 (2 hrs.)     |
| Sept. 19-20 | WA                    | NPI: “Native American Cultural Property Law”  | 32 (16 hrs.)    |
| TOTAL       |                       |   | 1418 (184 hrs.) |

## Webinars

Of the 29 training events, 8 were webinars (27.6%). Of the 1,418 total attendees at FY 2012 training events conducted either in whole or in part by the National NAGPRA Program, 321 received their training via webinar (22.6%).

For FY 12 new logistical features were added to support webinars. Registration was automated using the “Open Meeting” technology. Recordings of the programs are now available for some webinars to provide an opportunity for listening to those who did not attend the webinar. The power point and other training materials utilized in the webinars are available on the National NAGPRA Program website.

## Social Media

Beginning this year, the National NAGPRA Program was brought into the 21<sup>st</sup> century by using a social media platform, YouTube. The Program utilizes this platform as a natural extension of training in addition to webinars. The Program recently launched a government-branded YouTube National NAGPRA Channel as a means to make the NAGPRA Training Video Series, eight video segments, developed in 2010, available to the public on demand. The Channel features all eight video segments. Topics range from grant-writing tips, explanation of the Review Committee, notices, civil enforcement, consultation, decision-making and first-person narratives on

the development of NAGPRA, program statistics, anecdotal evidence, and in-depth engaging coverage of the entirety of the law and its consequences.

Thus far there have been 982 views since the Channel was launched in May 2012. The top three most viewed videos are The Development of NAGPRA, NAGPRA (In a nutshell), and Consultation under NAGPRA. Over 40% of the traffic sources were from a YouTube channel page and 20% from mobile applications. 78% of the playback locations were from a YouTube watch page, i.e., YouTube's individual video page. Currently, there are 15 subscribers to the Channel.

### **Outreach**

On a yearly basis, the National NAGPRA Program receives and responds to approximately 2,000 telephonic and electronic inquiries about NAGPRA. In addition, the Program receives letters of interest from prospective student interns and externs. In FY 2012, students at the following institutions worked in the National NAGPRA Program:

Michigan State University  
University of California, Los Angeles  
Florida State University

### **National NAGPRA Website**

The National NAGPRA website (<http://www.nps.gov/nagpra>) continues to be the program's primary medium for electronic communication. The website provides an opportunity to supply training and technical guidance on a range of NAGPRA matters. The website provides easy access to the statute, regulations, guidance, and a variety of information resources designed to support NAGPRA Implementation.

#### *Overview*

The homepage menu includes links to:  
Law and Regulations  
Documents and Publications,  
Online Databases,  
Notices,  
Grants,  
Training, and  
Review Committee.

During the reporting period, National NAGPRA posted new material, including: National NAGPRA Mid-Year Report to the Review Committee for FY 2012, National NAGPRA FY 2011 Annual Report, FY 2011 Review Committee Report to Congress, and the FY2012 NAGPRA Grants Awards. The homepage was updated on almost a weekly basis to maintain information on training events, open comment period on regulations, maintenance days for the databases in which the databases would be unavailable, advance information on upcoming Review Committee meetings and numerous points of interest.

#### *Frequently Asked Questions*

(<http://www.nps.gov/nagpra/FAQ/>) is designed to provide answers to the most common NAGPRA questions. Topics addressed in the FAQ include NAGPRA information, as well as specialized subjects, such as inadvertent discoveries, the status of non-federally recognized tribes under NAGPRA, and international repatriation. The FAQ also includes links to the NAGPRA Glossary (<http://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>). The NAGPRA Glossary provides definitions for many of the specialized terms used in NAGPRA. Links to specific items in the Glossary appear throughout the National NAGPRA Website. The NAGPRA Glossary is a working document, and users are invited to submit comments to [NAGPRA\\_info@nps.gov](mailto:NAGPRA_info@nps.gov).

### *Online Databases*

National NAGPRA provides online access to seven searchable databases—

1. Native American Consultation Database (NACD),
2. Notices of Inventory Completion,
3. Notices of Intent to Repatriate,
4. Notices of Intended Disposition,
5. Summaries,
6. Culturally Unidentifiable Native American Inventories, and
7. Culturally Affiliated Native American Inventories.

The Online Databases page (<http://www.nps.gov/nagpra/ONLINEDB>) provides a single entry point for accessing all current and future National NAGPRA online databases.

### *Notices*

The Notices page (<http://www.nps.gov/nagpra/NOTICES/INDEX.HTM>) provides an explanation of the Federal Register notice process as well as templates and databases for both Notices of Inventory Completion, Notices of Intent to Repatriate, and Notices of Intended Disposition.

### *Documents and Publications*

(<http://www.nps.gov/nagpra/DOCUMENTS>) provides a single point for locating the various print and electronic publications produced by the program. The Documents and Publications section has links to:

Maps (Indian Reservations in the Continental United States, Indian Land Areas Judicially Established 1978, and Military Bases in the Continental United States);  
National NAGPRA reports;  
National NAGPRA brochures;  
Forms;  
Templates;  
Reports Requested by the Native American Graves Protection and Repatriation Review Committee, and  
Other Items.

### *Training*

The Training page (<http://www.nps.gov/nagpra/TRAINING>) features a section titled —NAGPRA Webinars, designed to provide information on a series of webinars related to the implementation of NAGPRA. The NAGPRA Webinars section includes registration information, upcoming as well as past webinars. Two new webinar features were added this year. Users can now register for webinars through an automated process. Additionally, the **webinar** sessions can be **recorded** for future playback. New information has also been added regarding additional NAGPRA Trainings in partnership with the National Preservation Institution (NPI). Added in FY12 are presentations from the NAGPRA Basics Training as well as the NAGPRA Training Videos.

### *Law and Regulations*

The Law and Regulations section of the Website (<http://www.nps.gov/nagpra/MANDATES/INDEX.HTM>) has been expanded to include new subsections on Legislative History (including Preambles) and Regulatory History (including Preambles). New information has also been added regarding the Regulatory History (including Preambles) and the Congressional Oversight and Proposed Amendments.

For more information about National NAGPRA information systems, contact Mariah Soriano, National NAGPRA Program Officer, Web and Database Coordinator, ([msoriano@nps.gov](mailto:msoriano@nps.gov))

## Information Management

### *Overview*

During the reporting period, the program emphasized the evaluation of the current database and the Program's reporting requirements, input and audit of data, and posting of the online accessibility of data. The Program also continues reconciliation of database records and paper files for inventories and summaries. Records are continually being added and checked against originator records to refine, update and audit information. Open access to information on these databases has led to increased communication between museums and Federal agencies on collections responsibility, has led to updates of records for better data quality and has supported consultation in which thousands of Native American human remains previously held as culturally unidentifiable have either been amended to culturally affiliated and been included in notices or have been listed in notices for disposition under the CUI rule, 43 CFR 10.11, which became final two years ago.

### *National NAGPRA Program Database*

The amount and complexity of the data that the National NAGPRA Program collects and tracks -- through its reporting requirements, as well as through ongoing analyses -- continues to increase. Currently, nine linked modules (Tribes, Museums/Agencies, Mailing List, Grants, Notices, Inventories, Summaries, Civil Penalties, and Geographic Data) comprise the NAGPRA database in Access 2007. The Program maintains one internal database (NAGPRA 10) and several public on-line databases. In FY2012, NuAxis, LLC, a certified 8(a) information technology consulting firm with over 13 years of IT service support to the National Park Service, was awarded with end-of-year funding a contract to serve the National NAGPRA Program IT needs. In FY 2012, NuAxis evaluated the integrity and security of the internal database in response to the Cultural Resources Information Technology (CRIT) security requirements. Additionally, in anticipation of outgrowing the database, the Program asked Nuaxis to evaluate and provide programming skills for database migration from Access to SQL and eventual conversion to a SQL Server.

### *Online Databases*

The National NAGPRA Program maintains several databases and will be adding additional public access databases in the near future. The National NAGPRA Program receives the compliance documents from Federal agencies and museums, including:

Inventories of culturally affiliated Native American human remains,  
Inventories of culturally unidentifiable Native American human remains,  
Notices of inventory completion published in the Federal Register of Native American human remains, either culturally affiliated for culturally unidentifiable, as available for transfer of control,  
Notices of intent to repatriate items from the summaries, per agreement with tribes,  
Newspaper notices published by Federal agencies for new finds on the land and intended disposition, and .  
Summaries of Federal agency and museum collections,

The National NAGPRA Program supports consultation between Federal agencies and museums with tribes in furtherance of the NAGPRA process by making this information publicly available on the web. In addition, other tools to assist consultation are posted on the program website.

### *Data Quality*

The National NAGPRA Program holds complete paper compliance documents from each institution that has submitted an inventory and/or summary. The Program continues to review and to update summary and inventory records submitted by museums and Federal agencies. This includes, but is not limited to, reconciling records and notices, updating the culturally unidentifiable records to reflect subsequent cultural affiliations, and including repatriation information in both



the Culturally Unidentifiable Native American Inventories and the Culturally Affiliated Inventories Databases as reported by museums and Federal agencies. The reconciliation of paper-to-electronic records during the reporting period provided an opportunity to review and improve the filing system for the paper copies of inventories, summaries, and notices that been submitted to the National NAGPRA Program by museums and Federal agencies. National NAGPRA Program files, systematically catalogued by museum/agency, allow National NAGPRA staff and outside researchers to access inventory, summary, and notice files.

The databases are in continual update from newly submitted records as well as to reconcile Program data to ensure accuracy. New and amended inventories are entered into the databases as they come into the National NAGPRA office, which occurs regularly. The information is cross-referenced against inventory records and notices. Each of the databases is updated as more information becomes available therefore it is a continuous, ongoing process for the National NAGPRA Program. Corrections, updates, and additions to the databases are made as museums and agencies continue to verify the data that have been entered, or submit revised inventories.

#### *Database Status and Updates*

The following databases exist, or are being updated as follows:

##### **Native American Consultation Database (NACD)**

This long-standing database provides the names and contact information supplied by each tribe for their NAGPRA contact for consultation. Names and addresses of tribal leaders have been updated from the 2012 Bureau of Indian Affairs Tribal Leaders Directory. This database can be searched by tribal name, tribal representative name, state and county name, and reservation name to yield information on tribes, their status under NAGPRA, tribal representatives for consultation, reservation lands, and Indian Claims Commission decisions. The information in the database is updated when new information on the names of tribes and tribal representatives is received from the Bureau of Indian Affairs, or official contact information is received by National NAGPRA from tribes. An update of this information was completed in July 2012. The National NAGPRA Program is planning to include additional Native American land claims decisions made since the 1980 Final Report of the U.S. Indian Claims Commission.

Consultation efforts are further supported by maps accessible on the Program website, including maps of tribal lands, treaty areas, and the 1906 ethnographic maps of tribal aboriginal areas. Once the area of an item in a collection, or new discovery on the land, is determined, these maps can be used to locate the tribes with a possible interest in human remains or items from an area. The NACD will supply the contact information for the tribe.

##### **Notice of Inventory Completion (NIC) Database**

There is currently available on the website a database of published notices of inventory completion, which is updated as new notices are published. For this reporting period, 131 NICs were posted online. This information is helpful to aid in information sharing and informing consultation on other notices. This database can be searched by date, museum/agency, title, and key word.

##### **Notices of Intent to Repatriate (NIR) Database**

This a searchable library of published Federal Register notices pertaining to Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony. 57 NIRs were posted online for FY 2012.

##### **Cultural Unidentifiable Native American Inventories Database**

This database was launched in 2005, and has informed disposition decisions on culturally unidentifiable individuals, as well as bringing to public view the contents of CUI inventories from which thousands of individuals have been subsequently listed in amended inventories as culturally affiliated, placed in published notices and made eligible for repatriation. To date, 5,573 have been culturally affiliated since they were first inventoried as culturally unidentifiable.

## **Culturally Affiliated Native American Inventories Database**

This database is a transmission for public use of data from museums and Federal agencies that have NAGPRA compliance obligations. When the database was first launched in FY2010, 31,205 culturally affiliated human remains were reported in inventories. To date, it accounts for 57,258 Native American human remains. The increase is due in part to the efforts of the reporting agencies and museums to verify the original submissions and to submit amended inventories. Most of the original inventories dated to 1995. Also, listed in the database are associated funerary objects. The number of associated funerary objects is 1,219,462. The Database provides a comprehensive picture of where culturally affiliated Native American human remains are housed. Full population of data enables accurate reports of the individuals culturally affiliated but not yet in notices.

## **Summaries Database**

This database of summaries was launched as a public access item in the summer of FY 2010. By posting summaries information on a public access database, tribes will have easily accessible information on those Federal agencies and museums that list them as having an interest in items, as well as to disclose locations of items when summaries were not sent to a particular tribe. The database should foster consultation and inform claims decisions of tribes, as well as provide information to museums of similar collections. Each record will contain the name of every tribe and NHO that has received a copy of a summary from a museum or Federal agency.

In May of 2012, the Digitization of NAGPRA Summaries project was completed. The hardcopy files are in the process of being archived for delivery to NARA.

## **Notice of Intended Disposition Database (NID)**

Launched in April of FY 2010, this notice database completes the disclosure and public access of the NAGPRA compliance documents for public use, with new discovery information. A Notice of Intended Disposition is published in newspapers by Federal agencies for cultural items excavated or removed from Federal lands. The Federal agency official sends copies of published NIDs to the National NAGPRA Program. The NID database provides this information searchable by agency or by state.

## **Future Database Development**

A report of Review Committee decisions has been supplied in program reports for several years. These reports have given historical accounting of the parties in a dispute, the general dispute item and the resolution. For purposes of assisting parties, researchers and the general public, having an interest in the varied issues and determinations on the matters, a more issue specific database is needed. A searchable-by-topic database of Review Committee opinions has been evolving and has been the project of several volunteer law school student interns. This project is not yet ready for release.

Planned in the future are public access tools including: listings of training opportunities by government, tribal and private providers; resources to support the NAGPRA process for Federal agencies, tribes and museums such as providers of toxic substance detection; listings of state/NAGPRA protocols approved by the Secretary of the Interior; Federal agency NAGPRA contact lists; and other products as may be suggested by the Review Committee to support the NAGPRA process.

## ***State Burial Laws Project***

This multi-year project is a partnership with American University Washington College of Law. Over the course of several summers, law student interns/externs under the direction of David Tarler collected the enforcement and compliance laws pertaining to human remains and burials for every state and the District of Columbia, and annotated the laws by topic, in order to enable research across all states or within a particular state. By the end of FY 2010, 44 of the 51 jurisdictions had been annotated. The publicly-accessible data was launched on Washington College of Law's website on November 15, 2010, at the *NAGPRA at 20* symposium (<http://www.wcl.american.edu/burial>). In FY 2011, the project was on hiatus.

The product of this partnership will assist states in the resolution of repatriation and protection of human remains discovered on state lands, and will support further development by states of repatriation protocols consistent with NAGPRA. It will be a useful tool for developers and those who work in the field of NEPA and NHPA compliance.

For more information about National NAGPRA Program information systems, contact Mariah Soriano, Program Officer, National NAGPRA, msoriano@nps.gov.

## **Records Management**

Beginning in FY2012, the National NAGPRA Program began scanning NAGPRA Summaries, as part of a project for future posting on the Program website. Initially, the digitized files were saved on the WASO cultural resources server. However, the server space allotted to the program was reaching its maximum capacity. In an effort to minimize taking up shared space, the files were then saved on an external hard drive. It is anticipated to save these files back to a server once an alternative means of increased space becomes available.

In FY2013, the Program developed a Records Management plan which addressed steps to be taken on storing and archiving NAGPRA case files. Case files document the reporting of human remains and artifacts by Federal agencies and museums. Files contain notices, summaries of collections that may include unassociated funerary objects, sacred objects, and objects of cultural patrimony, and inventories of Native American human remains and associated funerary objects, and correspondence. The NAGPRA case files also include indexes and databases containing inventory and notice metadata.

This began the process of archiving all compliance documents, many dating as far back as 1992.

According to the National Archives and Records Administration (NARA) NAGPRA Records Schedule, NAGPRA case files, advisory committee records, and grants files are considered permanent records. NAGPRA case files include compliance documents and databases. Only upon completion of a project is the case considered inactive and closed.

In FY2013, all Summaries have been digitized. A project to scan Inventories began in July and approximately 90% of museums and universities have been digitized. The electronic records will be housed on a server, with the ultimate destination a linkage as supporting records to entries on the databases. All of the hard copy records will be transferred to NARA. Transfer of all historic records will be concluded in FY 13. Thereafter, there will be an annual transfer of paper records including digitized inventories and summaries, closed grants year files (5year files), and notices files for notices published in the fiscal year. Electronic records, such as Review Committee materials will also transfer to NARA on an annual basis, although some items are accessible on the National NAGPRA Program website on an ongoing basis.

## **Program Operations**

### *Externs, Interns*

The National NAGPRA Program forms partnerships with the National Center for Preservation Education (NCPE), law schools and universities, and the Cultural Resources Diversity Program within NPS, through the Student Conservation Association (SCA), to offer internships in government service and externships from law schools where students earn course credit. Intern/extern projects provide numerous benefits to the National NAGPRA Program and the communities that it serves.

The externs/interns and the projects in progress in FY 2012 were:

Project: Summaries Digitization- under the direction of Mariah Soriano  
contractor Alayna Rasile.

Project: NAGPRA Inventories Digitization - under the direction of Mariah Soriano  
Maya Solis, M.A. Moving Image Archive Studies, University of California, Los Angeles, NCPE Intern

Maya is from the Pascua Yaqui Tribe of Arizona and Blackfeet Tribe of the Blackfeet Indian Reservation in Montana. Her earlier internships were at the Academy of Motion Picture Arts and Sciences, The Sundance Institute, and Southern Ute Cultural Center and Museum. She has also served in a mentoring role to Native American students as part of an Indian Education Program.

Project: Program Records Archival – under the direction of Robin Coates and Mariah Soriano  
Kirsten Versaggi, B.A. Anthropology minor in Geography, University of South Florida, NCPE Intern. Kirsten's previous internships included Klamath National Forest, CA, and Prince Williams Forest Park, VA

### **Contracts and Cooperative Agreements**

There were five contracts and three cooperative agreements which were in place during this fiscal year. The advertising and bidding process for all contracts was handled through the National Park Service's contracting office in Denver. The cooperative agreements have concluded and will not be ongoing.

- The successful bidder on a contract to perform digitizing work on Program documents was Contract Solutions, Inc. of Virginia. That contract will continue into FY 13 when it is projected to finish digitizing NAGPRA summaries and inventories.
- The successful bidder on a contract to complete a study of NAGPRA training and to improve the NAGPRA report products was the Museum of Northern Arizona. Those products will be completed at the beginning of FY 13 for presentation at the fall meeting of the Review Committee and soon thereafter posting the product on the National NAGPRA Program website.
- The successful bidder on a contract to work as a civil enforcement analyst was Shannon Keller O'Loughlin of Washington, DC. Those efforts are detailed above in the Civil Enforcement section.
- NuAxis was the contractor to add capacity to the database operations and to add security to the data.
- Lesa Koscielski Consulting, Rapid City, South Dakota is in the second year of a five year bid contract to provide Review Committee and training support. Her Review Committee minutes and transcripts are well known to NAGPRA constituents as seen on the website. Her support of the webinars has enabled the ambitious year in webinar presentations, as well as data produced for reports on NAGPRA activities.
- The cooperative agreement with the National Conference of State Historic Preservation Officers supported the NAGPRA Notice Coordinator, backlog reduction project. That cooperative agreement ended in the first quarter of the fiscal year with the hiring of Alayna Rasile to replace Jaime Lavallee, who left at the end of FY 11. That agreement has now concluded.
- The cooperative agreement with the National Preservation Institute for training, training scholarships for small museums and tribes, as well as the video production project has concluded. A complete report of agreement accomplishments is forthcoming.
- The National Park Service has an agreement with the National Center for Preservation Education at Cornell to provide interns in various NPS positions. The National NAGPRA Program has been fortunate to hire two interns each year through that program.

### **National NAGPRA Staff**

The National NAGPRA staff roster as of September 30, 2012 is:

*Program Manager:* Sherry Hutt

*Program Secretary:* Robin Coates

*Program Officers:* David Tarler

Sangita Chari

Mariah Soriano

Melanie O'Brien

Melanie O'Brien joined the National NAGPRA Program the first week of January 2012. She was chosen through a hiring panel, which interviewed a number of talented applicants. She came to National NAGPRA from her work on tribal trust litigation. Her knowledge of Indian affairs and dealing with numerous parties as she managed technical documents impressed the panel. Her rapid acclimation to NAGPRA resulted in new training documents and 188 published notices.

The program is assisted by contractors:

Lesa Koscielski  
Alayna Rasile  
Shannon Keller O'Loughlin  
NuAxis, LLC

In addition, the National NAGPRA program receives support from NPS employees:

Hampton Tucker and Vedet Coleman, grants administration  
Kathleen Murphy, IT support  
Jane Fu, IT support  
Brian Biegler, budget

### **FY 2012 Budget**

The National NAGPRA Program receives appropriations from Congress for grants and grants administration. Funding is also provided through the National Park Service. The figures below are in thousands and are approximate pending final invoices.

|                                  |         |
|----------------------------------|---------|
| Congressional appropriation      | \$2,300 |
| Used for National NAGPRA Program | \$ 550  |

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|                              |         |
|------------------------------|---------|
| Available for Grants FY 2012 | \$1,750 |
|------------------------------|---------|

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|                        |         |
|------------------------|---------|
| Grants Awarded FY 2012 | \$1,750 |
|------------------------|---------|

#### *National NAGPRA Program Funding*

|                                     |     |
|-------------------------------------|-----|
| National NAGPRA Program support     | 550 |
| Grants administration appropriation | 191 |
| Operations funding from NPS         | 289 |

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|                           |          |
|---------------------------|----------|
| Total of funding sources: | \$ 1,030 |
|---------------------------|----------|

#### *Operational Expenses*

|   |        |
|---|--------|
| Personnel Compensation:   | \$ 655 |
| Contractors and interns:  | 130    |
| Publication (Fed. Reg. & printing)                                      | 120    |
| Travel (NAGPRA staff, Review Com. training & Review Committee meetings) | 50     |
| Equipment, supplies   | 10     |
| Review Committee meeting events, transcripts and fees                   | 65     |

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|                |          |
|----------------|----------|
| Total Expenses | \$ 1,030 |
|----------------|----------|

Table 15. Federal Agencies Inventories and Repatriation Data Report FY2012

Report Content: The data compiled for this report consist of presently available electronic inventory records of culturally unidentifiable and culturally affiliated human remains that were entered as of Sep 30, 2012, and information (notice-by-notice dataset) that agencies provided to the National NAGPRA Program. These datasets were cross-referenced with one another, and the results are in the table below.

| Federal Agency  | Collection as of FY12 |               | Culturally Affiliated (CA) |               | Culturally Unidentifiable (CUI) |              | Notices of Inventory Completion |               | Repatriated (as reported by Agency) |               | Remaining in Collection |               |
|---|-----------------------|---------------|----------------------------|---------------|---------------------------------|--------------|---------------------------------|---------------|-------------------------------------|---------------|-------------------------|---------------|
|   | MNI                   | AFO           | MNI                        | AFO           | MNI                             | AFO          | MNI                             | AFO           | MNI                                 | AFO           | MNI                     | AFO           |
| Reference Letter for Comments Below   | A                     | B             | C                          | D             | E                               | F            | G                               | H             | I                                   | J             | K                       | L             |
| Environmental Protection Agency   | 9                     | 1             | 0                          | 0             | 9                               | 1            | 0                               | 0             | 0                                   | 0             | 9                       | 1             |
| National Guard Bureau, Air National Guard   | 32                    | 0             | 0                          | 0             | 32                              | 0            | 0                               | 0             | 0                                   | 0             | 32                      | 0             |
| Tennessee Valley Authority  | 8389                  | 23435         | 359                        | 2565          | 8030                            | 20870        | 39                              | 2564          | 2                                   | 0             | 8387                    | 23435         |
| US Dept. of Agriculture, Forest Service   | 6577                  | 51714         | 5807                       | 36692         | 770                             | 15022        | 5392                            | 34443         | 1303                                | 19769         | 5274                    | 31945         |
| US Dept. of Defense, Air Force  | 40                    | 88            | 39                         | 88            | 1                               | 0            | 38                              | 85            | 29                                  | 61            | 11                      | 27            |
| US Dept. of Defense, United States Army Medical Research and Materiel Command, National Museum of Health & Medicine | 180                   | 0             | 22                         | 0             | 158                             | 0            | 16                              | 0             | 10                                  | 0             | 170                     | 0             |
| US Dept. of Defense, Army COE, MCX  | 3196                  | 63103         | 968                        | 45790         | 2228                            | 17313        | 958                             | 45549         | 953                                 | 45538         | 2243                    | 17565         |
| US Dept. of Defense, Army   | 286                   | 3891          | 111                        | 3138          | 175                             | 753          | 117                             | 3189          | 105                                 | 1557          | 181                     | 2334          |
| US Dept. of Defense, Navy   | 220                   | 6744          | 220                        | 6744          | 0                               | 0            | 218                             | 6744          | 218                                 | 6744          | 2                       | 0             |
| US Dept. of Defense, Navy, Marine Corps   | 1813                  | 739           | 1599                       | 739           | 214                             | 0            | 1599                            | 1596          | 739                                 | 739           | 1074                    | 0             |
| US Dept. of Energy  | 26                    | 1437          | 6                          | 1340          | 20                              | 97           | 6                               | 1340          | 6                                   | 1340          | 20                      | 97            |
| US Dept. of Homeland Security, U.S. Coast Guard   | 2                     | 0             | 2                          | 0             | 0                               | 0            | 2                               | 0             | 2                                   | 0             | 0                       | 0             |
| US Dept. of Interior, Indian Affairs  | 2495                  | 13242         | 2436                       | 13224         | 59                              | 18           | 1959                            | 13196         | 1950                                | 13180         | 545                     | 62            |
| US Dept. of Interior, Bureau of Land Management   | 2002                  | 19334         | 1576                       | 19032         | 426                             | 302          | 1576                            | 19032         | 1064                                | 14261         | 938                     | 5073          |
| US Dept. of Interior, Fish and Wildlife Service   | 1072                  | 6048          | 323                        | 933           | 749                             | 5115         | 166                             | 628           | 66                                  | 372           | 1006                    | 5676          |
| US Dept. of Interior, Indian Arts and Crafts Board  | 2                     | 0             | 2                          | 0             | 0                               | 0            | 2                               | 0             | 0                                   | 0             | 2                       | 0             |
| US Dept. of Interior, National Park Service   | 6494                  | 100472        | 4886                       | 85838         | 1608                            | 14634        | 4468                            | 84722         | 3823                                | 38938         | 2671                    | 61534         |
| US Dept. of Interior, Bureau of Reclamation   | 854                   | 3450          | 706                        | 3408          | 148                             | 42           | 567                             | 3342          | 564                                 | 3342          | 290                     | 108           |
| US Dept. of Justice (Federal Bureau of Investigation and Marshalls Service)   | 11                    | 3             | 9                          | 2             | 2                               | 1            | 9                               | 2             | 2                                   | 1             | 9                       | 2             |
| <b>Total</b>  | <b>33700</b>          | <b>293701</b> | <b>19071</b>               | <b>219533</b> | <b>14629</b>                    | <b>74168</b> | <b>17132</b>                    | <b>216432</b> | <b>10836</b>                        | <b>145842</b> | <b>22864</b>            | <b>147859</b> |

KEY: MNI=Minimum Number of Individuals; AFO=Associated Funerary Objects

- A. Total MNI in Inventory (CUI and CA)
- B. Total AFO in Inventory (CUI and CA)
- C. culturally affiliated MNI
- D. culturally affiliated AFO
- E. culturally unidentifiable MNI
- F. culturally unidentifiable AFO
- G. Sum of MNIs in NICs
- H. Sum of AFOs in NICs
- I. MNI Repatriated (reported by agency)
- J. AFO Repatriated (reported by agency)
- K. Difference of total MNI in collections (Column A) and total repatriated (Column I)
- L. Difference of total AFO in collections (Column B) and total repatriated (Column J)